

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SARA M. MULLIGAN, individually, as personal :
representative and administratrix of the Estate of :
Peter James Mulligan, and on behalf of all others :
similarly situated, GREG DE VERNA, individually :
and on behalf of all others similarly situated :
WILSTON PARRIS, individually and on behalf of :
all others similarly situated, and RODNEY :
PATRICK WOOTEN JR., by his mother, Patricia :
Wooten, individually and on behalf of all others :
similarly situated, :

Plaintiffs, :

-against- :

THE PORT AUTHORITY OF NEW YORK :
AND NEW JERSEY, :

Defendant. :
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ORDER STRIKING CLASS
ACTION ALLEGATIONS IN
FIRST AMENDED
COMPLAINT
02 Civ. 6885 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

By order to show cause dated September 19, 2002, I invited written submissions as to why the class allegations of the First Amended Class Action Complaint should not be stricken in accordance with my Order of September 6, 2002 and Sections 7107 and 7108 of the Unconsolidated Laws of New York. After review of plaintiffs' and the defendant's submissions, I now order that the class allegations in the First Amended Class Action Complaint be stricken.

Sections 7107 and 7108 of the Unconsolidated Laws of New York set out the conditions precedent for the Port Authority's waiver of immunity to suit. Compliance with these sections is mandatory and determines whether or not jurisdiction lies. See City of New York v. Port Auth.

of New York and New Jersey, 726 N.Y.S.2d 261, 261 (N.Y. App. Div. 2001); Lyons v. Port Auth. of New York and New Jersey, 643 N.Y.S.2d 571, 571-72 (N.Y. App. Div. 1996). Section 7107 provides that consent to suits is conditioned on 1) the filing of a suit within one year after the cause of action has accrued; and 2) the service of a notice of claim by the plaintiff upon the Port Authority at least sixty days before filing of the suit. N.Y. Unconsol. Law § 7107 (2002).

Section 7108 describes the contents of the notice of claim in further detail:

The notice of claim required by section seven hereof shall be in writing, sworn to by or on behalf of the claimant or claimants, and shall set forth (1) the name and post office address of each claimant and of his attorney, if any, (2) the nature of the claim, (3) the time when, the place where and the manner in which the claim arose, and (4) the items of damage or injuries claimed to have been sustained so far as then practicable.

N.Y. Unconsol. Law § 7108 (2002).

Plaintiffs' First Amended Class Action Complaint names four plaintiffs who bring action as individuals and as representatives of all others similarly situated. Plaintiffs argue that § 7108 does not exclude the possibility of a class notice of claim. I disagree. Section 7108 requires individual application and individual showing of claim and injury, not a generalized allegation suitable for a class. Section 7108 mandates that the notice of claim contain the name and address of each claimant, a description of the claim of that claimant, and the damages sustained by that claimant.

The class allegations in the First Amended Class Action Complaint are inconsistent with the requirements of sections 7107 and 7108. Members of the class other than the named plaintiffs are not identified, nor are their claims or damages described. Because each purported member of the class has not complied with sections 7107 and 7108, plaintiffs cannot bring suit against the Port Authority as a class. The class allegations in the plaintiffs' First Amended Class

Action Complaint are stricken. Since there is no need for argument, the session that was scheduled for October 7, 2002 is cancelled.

SO ORDERED.

Dated: New York, New York
October 4, 2002

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ALVIN K. HELLERSTEIN
United States District Judge